

Translation

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9. "Three-Year Wait For Sale of Confiscated Goods"

Until recently Russia's State Customs Committee was operating under the assumption that it was allowed to sell confiscated items at auction to cover customs duties, fines, arrears and penalties two months after their confiscation. The Constitutional Court has established a different time limit - three years.

Why have the Russian customs agents become accustomed to penalizing cargo owners for the smallest infractions? Well because the Russian Federation Government has assigned Customs a sort of plan for collection of duties which will help to augment the federal budget. It is not surprising that the customs officers fine the owners of the cargo, confiscate the goods which have been imported from abroad, and if they can find a catch, they'll detain the means of transportation of that cargo as well. And then they'll sell the goods at auction. "As a rule, for peanuts. Or, more accurately, at the so-called 'residual value,' which is determined by the customs agents themselves," explains Natalya Bagaeva, Director of the Saint Petersburg Association of Forwarding Agents. One of the most memorable episodes, according to Ms. Bagaeva, occurred in Saint Petersburg about five years ago, when a relatively large shipment of imported shoes was confiscated and sold to cover Customs' losses. Occurrences of a similar scale were seen in Novosibirsk and Irkutsk. The owners place the value of the goods in the hundreds of thousands of dollars. In reality, they were sold for several times less than that. The owners subsequently filed a grievance based on the customs agents' actions, and through the court were reimbursed the full value of the confiscated shipment, and not the symbolic amount for which it was sold at auction. Bagaeva noted that the Russian customs service prefers to detain and confiscate completely liquid goods which can be sold.

A series of similar processes in our country's major cities, including Saint Petersburg, has forced the customs services to move with greater care. However, this only affects pricing policy, which has become more flexible at auctions. "But what do you propose we do with the confiscated goods?" It needs to be sold more quickly; otherwise it will jam up the warehouses and paralyze our operations; this is how the customs agents justify their actions.

At the same time, lawyers from the North-Western Customs Directorate have referred to the Customs Code of the Russian Federation, which allegedly directs that confiscated goods may be placed on the auction block two months after they were detained, if the owner of the cargo does not fulfill Customs' requirements. However, two months in Russian conditions is too short a time to sort out relationships, for example, if a cargo were to get lost in transit, if the documents were to contain errors, or if in transfer, the seals were to be damaged.

And so, the Saint Petersburg and Len-Obast Arbitration Court has begun to give attention to the fact that the RF Customs Code contains no such conditions - it specifies only the time limits for the cargo owners to complete the formalities, but not the time limits, after which the sale of confiscated goods is permitted. Therefore, it is forbidden to do this until the end of the usual limitation of action term - three years. The Saint

Petersburg Arbitration Court filed for clarification with the Constitutional Court, and the Constitutional Court confirmed its decision.

In conclusion it should be noted that the Saint Petersburg and Len-Obast Arbitration Court, and the North-Western Customs Directorate declined to comment on the particulars, stating that the document had not yet reached the region. Practice indicates that it sometimes takes a month or more for such documents to make their way through the government maze from Moscow to Saint Petersburg. Never mind that information on court proceedings can be placed on the Internet!

However, the insurance agents have not been hesitant to comment on the situation.

"The high import tariffs in Russia provoke cargo owners into using ruses or tricks and to violating the law. Neither the customs agents nor the police are interested in finding the culprits. The Russian State Customs Committee recommends in such circumstances to simply commandeer and confiscate the means of transportation or the cargo. Unpaid taxes or duties are then made good through the sale of the cargo at auction at reduced prices, sometimes at only ten percent of their actual value. You can draw your own conclusions on the motives of the customs agents who participate in operations like this," said Alan Wilkins, a representative of the British insurance company TT Club, who is well acquainted with the problems of the Russian cargo shipment market.

It is for just this reason that insurance companies, as a rule, do not undertake to ensure international shipments through Russia against risks associated with the actions of the Russian Customs Service: They are sometimes simply unpredictable. And that, more than anything else, is what scares people away from shipping goods through Russia. As a result, our country is losing at least two billion dollars simply because goods are being rerouted to avoid Russia.